Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO: _____

In The
Supreme Court of the United States

HOWARD C MCDONALD JR
*Petitioner*

V

WILLIAM L GRIFFIN JR &
JOHN DOE INSURANCE
AMERICAN CIVIL LIBERTIES UNION INC &
JOHN DOE INSURANCE COMPANY
LESLIE J COOPER
DUNBAR WILLIAMS PLLC &
JOHN DOE INSURANCE COMPANY
C. JACKSON WILLIAMS
ROSEMARY S MCDONALD
NANCY R EVANS et al
*Respondents*

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

# PETITION FOR WRIT OF CERTIOARI

Howard C McDonald Jr
411 North Joann Street
Tupelo, Mississippi 38801
662-844-5869
*In Propria Persona*

46 pp

## QUESTIONS PRESENTED

**Can a citizen be permanently deprived of a Federal Constitutional Right, of which no appeal lies, in acts of Ultra Vires and where the judicial usurper's jurisdiction has been challenged and never answered ?**

**Did the Federal District Court and Court of Appeals depart from established, controlling judicial and congressional precedence so greatly that it requires the exercise of the United States Supreme Courts Supervisory Power ?**

**Does a usurper of judicial power, who is not appointed within the dictates of a state constitution and whose jurisdiction has been challenged but never answered, and who knowingly goes against the constitutions, superior case law and rules of civil procedure, thereby exercising no judicial discretion or jurisdiction, have immunity from a 42 USC 1983 claim and does these acts violate the litigant's, without an attorney, constitutional right of self representation and due process and equal protection of the laws ?**

## PARTIES TO PROCEEDING

The plaintiff and defendants to this proceeding are named in the caption. Other interested parties are the Mississippi Supreme Court Justices who violated the Mississippi Constitution and this Petitioners Due Process and Equal Protection of the Laws, all whom are members of the Mississippi Corporation known as the Mississippi Bar Association.

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## OPINIONS BELOW

1 ) Federal District Court for the Northern District of Mississippi - filed 4 Oct 99

2 ) Federal District Court for the Northern District of Mississippi-Rehear Denied – filed 21 Oct 99

3 ) 5th Circuit Court of Appeals

Non-published- No precedence - filed 25 Jul 2000

4 ) 5th Circuit Court of Appeals

Rehear Denied – filed 22 Aug 2000

## JURISDICTION

Petitioners 42 USC 1983 claims were dismissed pursuant FRCP 12 (b) 6 granting Absolute Judicial Immunity to William L Griffin Jr and Rooker Feldman Doctrine to remaining defendants by the Federal District Court on 4 Oct 99. Petition for Rehear was denied on 21 Oct 99. On appeal, the 5th Circuit Court of Appeals affirmed the District Courts

dismissal pursuant to FRCP 12 (b) 6 but on different grounds by Order dated 25 Jul 2000. Petition for Rehear was denied on 22 Aug 2000. The jurisdiction of this Court is invoked pursuant to United States Constitution Art III Section 2.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### Constitutions

United States Constitution Bill of Rights Art I

United States Constitution Bill of Rights Art VI

United States Constitution Bill of Rights Art VII

Untied States Constitution Bill of Rights Art VIII

United States Constitution Bill of Rights Art XIV

Mississippi Constitution Art 3 Sect 24

Mississippi Constitution Art 3 Sect 25

Mississippi Constitution Sect 153

Mississippi Constitution Sect 155

**Mississippi Constitution Sect 165**

**Statutes**

**28 USC 2072**

**42 USC 1983**

**Mississippi Code Annotated 9-1-105**

**Mississippi Code Annotated 11-15-1**

**Mississippi Code Annotated 11-46-1**

**Mississippi Code Annotated 11-46-5 (2)**

**Mississippi Code Annotated 11-46-17**

**Mississippi Code Annotated 11-55-5 (4)**

**Mississippi Code Annotated 25-1- 37**

**Federal Rules of Civil Procedure**

**FRCP 8**

**FRCP 26 – 37**

**FRCP 83**

**Northern District of Mississippi Local Rule 5.1 (10)**

**Northern District of Mississippi Local Rule 26.1**

**Mississippi Rules of Civil Procedure**

**MRCP 6**

**MRCP 81 (d)**

## TABLE OF AUTHORITIES

***Federal Case Law***

**Anderson v Liberty Lobby 477 US 242**

**Ball v US 140 US 118**

**Boyd v US 116 US 616**

**Butz v Economou 438 US 478**

**Cellutex v Catrett 477 US 317**

**Codispoti v Pennsylvania 418 US 506**

**Conley v Gibson 355 US 41**

**Elfman Motors Inc v Chrysler Corp 567 F 2d 1252**

**Frad v Kelly 302 US 312**

**Greer v Estelle 378 F Supp 163**

**Hagen v Levine 415 US 528**

**Hale v Henkle 201 US 43**

**Hellenic American Neighborhood Action Committee V City of New York citing Hudson v Palmer 468 US 531**

**Imbler v Pactman 491 US 71**

**Johnson v Lankford 245 US 541**

**Leatherman v Tarrant County NICU 507 US 163**

**Logan v Zimmerman Brush Co 455 US 422**

**Martin v Lankford 245 US 547**

**Martin v US 263 F2d 516**

**Norton v Shelby County 118 US 425**

**Ryder v US No 94-431**

**Scheurer v Rhodes 416 US 233**

**Stump v Sparkman 435 US 349**

**Troxel v Granville No 99-138**

**Woods v Edwards 51 F3d 577, 583 (5th Cir)**

***Mississippi Case Law***

**Barton v Barton 95-CT-01020-SCT**

**Herring v Herring 571 So 2d 239**

**Moreland v Riley 537 So 2d 1345**

**Nelson v State 626 So 2d 1221**

**Ortega v Lovel 97-CA-241-SCT**

**Taylor v Taylor 98-CA-00647**

**Touchtone v Touchtone 94-CA-00172-SCT**

**Walls v Spell No 97-CA-00378-SCT**

**Weigan v Houghton 97-CA-01245-SCT**

## PETITION FOR WRIT OF CERTIORARI

Petitioner Howard C McDonald Jr prays that a Writ of Certiorari issue to review the actions of the Fifth Circuit Court of Appeals and United States District Court for the Northern District of Mississippi whose judgments and actions in dismissing Petitioners 42 USC 1983 claims departed greatly from established judicial precedent and afford Petitioner no post deprivation relief.

## STATEMENT OF THE CASE

This case involves the denial of Petitioners Constitutional Rights where no post deprivation relief lies. (Hellenic American Neighborhood Action Committee v City of New York citing Hudson v Palmers 468 US 531 and Logan v Zimmerman Brush Company, 455 US 422) Although these violations occurred during alleged state court proceeding, the

violations themselves are separate and distinct and not correctable on appeal. (Appeals have been filed and not forwarded to this day) Despite the orders of the lower Courts, there was no child custody battle. Petitioner was the full custodial parent of his two smallest children pursuant to a final decree issued by the Lee County Mississippi Chancery Court. Defendant Rosemary McDonald, having established a relationship with Defendant Nancy Evans, a dismissed counselor with numerous connections to various gay and lesbian groups / activists, was disgruntled although she did not appeal.

During the ensuing months, Defendants R McDonald and Evans made contact with Defendants American Civil Liberties Union Inc (ACLU), Leslie Cooper, Dunbar Williams PLLC, and C Jackson Williams (whom has now gained employment with

the Mississippi Attorney Generals Office) whom had pending litigation before the Mississippi Supreme Court regarding Gay rights of a homosexual parent. Defendant R McDonald, through local Counsel filed a Motion for Modification to Final Decree for relief from Court ordered financial responsibilities. The Constitutionally elected Chancellors recused themselves without written reason and then Constitutionally elected Defendant William L Griffin Jr was appointed to hear the case. Defendant Griffin was defeated after one term at the polls, his term ending December 98. Defendant Griffin held no hearings, motions or other matters during his Constitutional Tenure as Judge. Unknown at the time was Defendant Griffin had been an unsuccessful Defendant in a race / sex civil rights lawsuit.

On 11 Jan 99, Defendant Griffin was unconstitutionally appointed to be a Special Chancellor in the case. (MS Constitution Sect 153 & 165 & MS Code Annotated 9-1-105) thereby giving Defendant Griffin no jurisdiction. (Ryder v US, No 94-431, Ball v US, 140 US 118 and Norton v Shelby County 118 US 425) Defendant Griffin did not take the required Oath of Office to support the Constitutions of the United States and Mississippi prior to proceeding, thereby having no jurisdiction. (MS Constitution Section 155 & MCA 9-1-105) (Criminally, Defendant Griffin later altered the unsworn oath and entered it into federal district court of which notice was given to the Court with no action taken) The day following a favorable ruling to the ACLU on Gay Rights (5 Feb 99) Defendant R McDonald's local attorney filed to withdraw as

Counsel which Defendant Griffin, without authority or jurisdiction granted on 10 Feb 99. On 11 Feb 99 Defendant Williams of Defendant Dunbar Williams PLLC and Associate Attorney for Defendant ACLU filed entry of appearance on behalf of Defendant R McDonald.

On 1 May 99 the unsworn Oath of Office and Order granting continuance (signed 22 Feb 99) was filed by Defendant Griffin without authority or jurisdiction and in violation of Mississippi Constitution and law. (MS Constitution Section 155 & MCA 9-1-105)

On 3 Mar 99 Defendant Cooper of Defendant ACLU Inc New York Gay and Lesbian Task Force lead attorney, in violation of the ACLU Corporate Charter which constitutes acts of Ultra Vires (Hale v Henkel 201 US 43) filed for admission Pro Hac Vice followed by another Motion to Modify the Final

Decree which restricted visitation between Defendant R McDonald and children to be outside the presence of her lesbian partner, Defendant Evans or other homosexuals. Petitioner was not properly served with Notice as required by Mississippi Rules of Civil Procedure, therefore no jurisdiction (MRCP 6 & 81).

On 15 Mar 99 Petitioners Attorney filed for a Continuance to prepare for the new Motion since he had been out of country. Defendant Griffin, without authority or jurisdiction did not allow this.

On 17 Mar 99 Defendant Griffin, without authority or jurisdiction had four Motions filed in the case. None addressed custody. Defendant Griffin totally ignored the Motions filed and engaged in coercive tactics finally sending Petitioners Attorney to Petitioner relaying the message that Defendant

Griffin had made up his mind what he was going to do and that if Petitioner insisted on proceeding Defendant Griffin would punish him monetarily. Under duress and coercion, Petitioner verbally agreed to a proposed change (Petitioner was already out approximately $2000.00 in attorney fees for that day waiting) and immediately told his Attorney he wished to file a judicial complaint against Defendant Griffin.

Petitioner's Attorney filed to withdraw as Counsel on 26 Mar 99. On 2 Apr 99 a Notice of Hearing was filed by Defendant R McDonald and Williams for hearing on 6 Apr 99. Over Petitioners objection as he needed to secure new Counsel and that Petitioner was not allowed due process as required by MRCP 6, Defendant Griffin without authority or jurisdiction entered the proposed order, without Petitioners

signature and over objection as a "ministerial act" as supported by the record, which falls outside any alleged judicial immunity. On 23 Apr 99 Defendant R McDonald and Williams entered Motion for Correction of Clerical mistake which Defendant Griffin without authority or jurisdiction entered over objection on 5 May 99 again not allowing Petitioner due process as required by MRCP 6.

On 5 May 99 Defendant R McDonald, Williams and Evans caused to be entered a Motion to Hold Petitioner in Contempt of Court for asking for positive identification of persons coming to pick up his children for visitation. Petitioner had not been contacted that anyone other than the mother would be coming to pick up the children. The mother was in fact at work.

On 6 May 99, Petitioner appealed the order of 28 Apr 99, thereby removing any alleged jurisdiction of Defendant Griffin. (Motor Inc v Chrysler Corp 567 F 2d 1252, Martin v US 263 F 2d 516, Donovan v Esso 259 F 2d 65, Moreland v Riley 537 So 2d 1345 (Miss)

Petition for Stay of Enforcement was filed on 18 May 99, contesting among other things Defendant Griffins jurisdiction. (Hagen v Levine 415 US 528)

On 7 May 99, Petitioner filed a Response to the Motion for Contempt along with Motion for Summary Judgment dismissing the Motion as Defendant R McDonald had lost no visitation and Defendant Evans had no standing in the matter.

On 11 Jun 99 Defendant R McDonald, Williams and Evans filed a Second Motion for Contempt alleging interference with Defendant R McDonald visitation rights as she again was at work and sent

someone without notice to get the children. Defendant R McDonald lost no time with the children.

On 14 Jun 99 Petitioner responded to Second Motion for Contempt. Listed was that the case was on appeal, therefore the Court had no jurisdiction in that case and the Motion was premature as it complained of acts which had yet to happen. Petitioner demanded his right to trial by jury.

On 25 Jun 99 Defendant Griffin without authority or jurisdiction held a hearing over Petitioners objection. Petitioner was denied Assistance of Counsel, Defendant Griffin refused to recuse himself, denied dismissal, refused to require the requested Discovery and Admissions which were timely filed, and denied right to trial by jury (Walls v Spell 97-CA-00378-SCT Miss citing Codispoti v

Pennsylvania 418 US 506) for a matter not even unconstitutionally appointed to hear, all in violation of existing law and rules. Mississippi law eliminates jurisdiction to hear a matter which not appointed to hear. (Barton v Barton, 95-CT-01020-SCT Miss & Frad v Kelly 302 US 312 & Nelson v State 626 So 2d 1221 Miss 1993 & Herring v Herring 571 So 2d 239 Miss 1990)

Defendants Griffin, R McDonald, Williams, Evans ensued on a venture to immediately take Petitioners children away and without jurisdiction Defendant Griffin ordered the bailiff of the Court to go, during trial, to the nursery and home of Petitioner and bring the children to the Court. Without authority or jurisdiction Defendant Griffin found Petitioner in "Direct Contempt" for acts not yet occurring and those outside the presence of the Court, all in

violation of statutes and rules of procedure. Children were immediately given to the mother and left the Court crying. Petitioner again appealed this "Temporary Order". It should be noted Petitioner was a candidate for Lee County Sheriff at the time and his children removed from him without jurisdiction until primary election day.

On 3 Aug 99 (Primary Election Day), Defendant Griffin, Williams, R. McDonald (All defendants in this action at the time) held a "kangaroo" Court without Notice, absent authority and jurisdiction wherein Defendant Griffin on his own Motion opened Court, read a pre typed order (which was delivered to Defendant Griffin by another Chancellor) changing custody of the children to Defendant R. McDonald, all in 12 minutes without argument or hearing. There was no Motion to change

custody nor was there any emergency situation requiring this. This order was also appealed. Under Mississippi law a modification of custody requires showing (1) a material changed in circumstances adversely effecting the children (2) must show by evidence a change in custody will be in the best interest of the children. (Taylor v Taylor 98-CA-00647-COA Miss & Ortega v Lovel 97-CA-241-SCT Miss & Touchtone v Touchtone 94-CA-00172-SCT Miss & Weigan v Houghton 97-CA-01245-SCT Miss) The acts complained of are nothing but a government effort to create a change in circumstances. Petitioner has filed for Stay of Enforcement of Judgment on all three temporary orders (all issued in the same case after appeal and jurisdiction challenge), which have been denied by the Mississippi Supreme Court. Temporary Orders are non-appealable under

Mississippi Law. These orders are permanent in effect giving Petitioner no post deprivation relief. (Miss Appeals 1999-TS-00848, 1999-TS-01259, 1999-TS-01384 and Petition for En Banc)

This series of events lead Petitioner to file a 42 USC 1983 action in the Federal District Court. Complaint was filed pursuant to FRCP 8 (a) and Conley v Gibson, 355 US 41. Shown was Defendant Griffin was not a constitutional judge, was without authority or jurisdiction and the remaining Defendants to be the causation of these deprivations. Further shown was Defendant ACLU, Williams, Cooper had acted in acts of Ultra Vires as the ACLU Corporate Charter does not allow the ACLU of New York to travel to Mississippi and commit these acts. All documents were identified and pre core discovery given the defendants however these documents were not

physically located in the file per Federal District Court Local Rule. Although the complaint listed each act and constitutional violation, this Court has held that the heightened pleading requirement to be violative of FRCP 8. (Leatherman v Tarrant County NICU 507 US 163) Defendants filed for dismissal pursuant to FRCP 12 (b) 6 but brought matters outside the pleadings thereby converting it into a Motion for Summary Judgment (FRCP 12, Cellutex v Catrett 477 US 317, Anderson v Liberty Lobby 477 US 242) Request for Discovery had been filed to address the alleged judicial immunity issue (jurisdiction) but all discovery for all Defendants was Stayed by the Federal Magistrate in violation of FRCP 26-37, 28 USC 2072 and Conley v Gibson, 355 US 41. This Court has many times ruled title alone does not bestow immunity. Further, local rules allow for discovery to

determine if someone does have a claim to immunity. The Federal District Court dismissed the case pursuant to FRCP 12 (b) 6 with absolute judicial immunity to Defendant Griffin and the Rooker Feldman Doctrine as to the other Defendants. Petition for Rehear was denied. On appeal to the 5th Circuit, judgment was affirmed under FRCP 12 (b) 6 however on different grounds. The 5th Circuit found 11th Amendment Immunity to the State (never plead by the state so waived ), judicial immunity to Defendant Griffin and the remaining defendants not actionable under 42 USC 1983, all in violation of existing case law. (Butz v Economou et al 438 US 478, Imbler v Pactman 491 US 71, Stump v Sparkman 435 US 349, Hale v Henkle 201 US 43 Woods v Edwards, 51 F 3d 577, 583 -5th Circuit 1995) States can be held liable for willful and negligent violations of state

law. (Johnson v Lankford, 245 US 541, Martin v Lankford 245 US 547 and Scheurer v Rhodes, 416 US 233) Petitioner questioned the states standing to represent Defendant Griffin in an official or individual capacity to which the Attorney General asserted his right to defend Defendant Griffin even though Defendant Griffin was unconstitutionally appointed to hear this one case in a local government county.

In short, Petitioner has had constitutionally protected rights of parenthood and due process and equal protection of the laws in the Courts (both Federal and State) totally disregarded. Although Petitioner followed established law and Rules of Civil Procedure, Petitioner was not afforded these established rights, as the Courts give those members of the Attorney-Bar Associations, therefore, raising

Petitioners claim that his constitutional right of self-representation under both the Federal and State Constitutions were denied in its effect.

## REASONS FOR GRANTING THE WRIT

There are few issues on which the U.S. Supreme Court has spoken so eloquently--and so consistently—as that of parental rights. In 1923 the Court asserted that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Meyer v. Nebraska, 262 U.S. 390, 399, 401 (1923). On June 5, 2000, the Court declared that [I]t cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. Troxel v.

Granville (530 U.S. 2000) Fundamental Constitutional rights are accorded a special status in judicial review. The Fourteenth Amendment prohibits the state from depriving any person of "life, liberty, or property, without due process of law." The Court has long recognized that the Due Process Clause "guarantees more than fair process." Washington v. Glucksberg, 521 U.S. 702, 719 (1997). It also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." Id., at 720; see also Reno v. Flores, 507 U.S.292, 301302 (1993).The level of scrutiny required for state actions that infringe upon fundamental rights is "strict scrutiny", which requires the state to show that the infringement serves a "compelling state interest" and

that there is no Constitutionally less offensive way for the state to satisfy this compelling interest. There are sweeping—though seldom appreciated—implications of recognizing parental rights as Constitutionally fundamental. This is true regardless of whether the interference with the right is permanent or temporary, pendente lite.

The Court has held that the deprivation of fundamental liberty rights "for even minimal periods of time, unquestionably constitutes irreparable injury." Elrod v. Burns, 96 S.Ct. 2673; 427 U.S. 347, (1976). Under the strict scrutiny standard, such a deprivation of rights must occur only when there is a compelling state interest served by interfering with these rights and there is no more Constitutionally benign way to achieve this compelling state interest. While it is uncontroversial

**that, under the parens patria doctrine, the state has a compelling interest in preventing harm to children, this interest is not sufficient to Constitutionally justify the infringement in question. .As the Court declared in Troxel: [S]o long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children. Troxel, op. cit.**

**Parental rights are among the strongest protected constitutional rights enjoyed and stringently upheld by this Court with the most recent ruling of this Court known to Petitioner. (Troxel v Granville No 99-138) This does not extend to homosexual partners, private political groups such as the ACLU, the**

government absent emergency circumstances or usurpers of judicial power carrying out personal vendettas. This Court has itself ruled that when a de jure judge goes outside the Constitutions and laws, it exercises no discretion and becomes a minister of its own prejudice. Further, fundamental rights of citizens, protected by the constitutions, Rules of Civil Procedure and case law have been set forth by many years of experience by this Court, Congress and the States. A total disregard for these fundamental rights bring discredit on the judiciary as a whole and weaken the very foundation of these United States and takes away Petitioners substantive rights as afforded by acts of Congress and the constitutions. The United States and Mississippi Constitutions guarantee remedy by due course of law a remedy without sale, denial or delay. (US

**Constitution Bill of Rights XIV and Mississippi Constitution Art III Section 14)** **If this is allowed to stand there is no remedy for Petitioner in violation of the constitutions. In fact the granting of absolute immunity itself violates these constitutional principals. The denial of applying these well traveled and known (plead to the courts) rules of civil proceedure, case laws and constitutional guarantees that are allowed to attorneys of the bar denies the litigant without an attorney the right to self representation, due process and equal protection of the law.**

## CONCLUSION

**Petitioner was the target of the powerful American Civil Liberties Union Gay and Lesbian Task Force who along with the other Defendants, in acts of Ultra**

Vires, set out in its usual and customary fashion to financially force Petitioner into submission in furtherance of their political agenda. The Courts, having an affirmative duty to watch for violations of individuals constitutional rights, especially from powerful entities such as the ACLU or government.(Boyd v US 116 US 616) This Court has twice struck down the 5th Circuits "heightened pleading" rule and continuously followed the guidance of Conely v Gibson. (Leatherman v Tarrant County NICU 507 US 163 & Conley v Gibson 355 US 41) Additionally, the constitutional right of remedy for the wrongs inflicted upon the Petitioner would be enforced by the Courts. The granting of this Writ and successful upholding of this 42 USC 1983 action will not only provide the necessary stability of the lower Courts, but will protect other citizens from the abuse

**of power found in this case, thereby setting guidance which will reduce the loads placed on this Court. Further this case cannot legally be said to be frivolous as it states flagrant constitutional violations and not mistake or ability for correction on appeal**

**Respectfully Submitted**
**Without Prejudice**

**HOWARD C MCDONALD JR**
**411 North Joann Streeet**
**Tupelo, MS 38801**
**662-844-5869**
***In Propria Persona***

Appendix 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

HOWARD C MCDONALD JR — PLAINTIFF

Vs — No 1-99cv226-D-D

WILLIAM L GRIFFIN JR, et al — DEFENDANTS

## OPINION

Presently before the Court are separate motions of the defendants for dismissal pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure. Upon due consideration of the motions, the court finds that they should be granted.

## FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff in this case is an irate former husband bringing an attempted civil rights action arising from his state child custody case. In his pro se complaint he seeks a total of $144 million in damages from among others his ex-wife, her lawyers, the ACLU and the Chancellor who presided over the case. This case is reminiscent of Hale v Harney, 786 F 2d 688 (5th Cir 1986) and Brinkmann v Johnston, 793 F 2d 111 (5th Cir 1986) and, likewise, is a frivolous and misguided attempt to harass the defendants with groundless litigation.

## Appendix 2

## DISCUSSION

### A. Motion to Dismiss

The plaintiffs complaint, since he is appearing pro se, is to be construed liberally. Kremp v Dobbs, 775 F 2d 1319, 1320 (5th Cir 1985) Additionally, in ruling on a motion to dismiss under Rule 12 (b)(6), the court must take as true the well-pleaded allegations in the complaint and construe them in the light most favorable to the plaintiff. C.C. Port, Ltd v Davis-Penn Mtg Co 61 F 3d 288, 289 (5th Cir 1995). Dismissal is only proper if it appears certain that the plaintiff cannot prove any set of facts that would entitle him to the relief he seeks. C.C. Port Ltd 61 F.3d at 289. Moreover, if a required element or a prerequisite relief is lacking in the complaint, dismissal is proper. ID.

### B. Judicial Immunity

The plaintiffs civil rights suit against the state judge is frivolous. At all times, Judge Griffin was acting within the scope of his judicial duties, the complaint contains no credible allegations to the contrary. This being the case, Judge Griffin is absolutely immune from suit. Stump v Sparkman, 435 US 349, 362-64, 98 S.Ct 1099, 1107-09, 55 L.Ed 2d 331 (1978). It is well settled that a judge enjoys absolute immunity from liability for any damages resulting from judicial acts performed within his jurisdiction. Brinkman 793 F 2d at 112. Therefore, the plaintiffs claims against Judge Griffin are dismissed.

## Appendix 3

### C. 42USC 1983 and the Rooker-Feldman Doctrine

The plaintiffs claims against the remaining defendants are likewise frivolous. Although private acts may support an action for liability under 42 USC 1983 if the defendant is a "willing participant in a joint action with the state or its agents," the plaintiff must state specific facts, not merely conclusory allegations, supporting his charge. Brinkmann 793 F 2d at 113; Hale 786 F 2d at 690. The plaintiff's complaint in the present case does not state any factual basis to support his conspiracy charges. Therefore, dismissal on this ground alone is proper.

Moreover, it has long been settled that litigants may not obtain review of state court actions by filing complaints about those actions in a lower federal court. Brinkmann 793 F 2d at 113. This principle, known as the Rooker-Feldman doctrine, is not limited to actions which candidly seek review of the state court's actions but extends to all cases in which the constitutional claims presented in federal court are "inextricably intertwined" with the state courts action. Id The plaintiff's suit here solely concerns actions taken during his state custody litigation. Therefore, the claims he has presented in this court are inextricably intertwined with the state courts action in that litigation and Rooker-Feldman applies with full force rendering dismissal of the complaint appropriate.

### D. Sanctions

## Appendix 4

The Fifth Circuit long ago cautioned pro se litigants that attempts to appeal state court domestic proceedings to federal court under the guise of civil rights actions invites sanctions. Brinkmann 793 F 2d at 113. This plaintiff is proceeding pro se (despite his protestations to the contrary) and is presumed to be cognizant of the Fifth Circuit's warning. While sanctions are appropriate in this case, the court declines to impose them. Instead, the plaintiff is hereby warned that any future frivolous litigation will result in the imposition of substantial monetary and nonmonetary sanctions.

A separate order in accordance with this opinion shall issue this day.

This the 4th day of October 1999.

— s —
Glenn H Davidson

United States District Judge

Filed Oct 5 1999

Appendix 5

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF MISSISSIPPI**
**EASTERN DIVISION**

| | |
|---|---|
| HOWARD C MCDONALD JR | PLAINTIFF |
| Vs | No 1-99cv226-D-D |
| WILLIAM L GRIFFIN JR, et al | DEFENDANTS |

## OPINION

Presently before the court is the Plaintiff's "Petition for Reconsideration of Order Dismissing Complaint" After careful consideration of the petition, the court finds that it should be denied.

THEREFORE, it is hereby ORDERED that the Plaintiff's petition for reconsideration is DENIED.

SO ORDERED, this the 21st day of October 1999.

— s —
Glenn H Davidson

United States District Judge

Filed Oct 21 1999

Appendix 6

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO 99-60783
SUMMARY CALENDAR

HOWARD C MCDONALD JR
PLAINTIFF-APPELLANT

Versus

WILLIAM L GRIFFIN JR; JOHN DOE INSURANCE; AMERICAN CIVIL LIBERTIES UNION, INC; JOHN DOE INSURANCE; LESLIE J COOPER; DUNBAR WILLIAMS, PLLC; JOHN DOE INSURANCE; C. JACKSON WILLIAMS; ROSEMARY S MCDONALD; NANCY R EVANS
DEFENDANTS-APPELLEES

Appeal from the United States District Court
For the Northern District of Mississippi
USDC No 1:99-cv-226-D-D

Before POLITZ, HIGGINBOTHAM, and DeMOSS, Circuit Judges.

PER CURIAM*

*Pursuant to 5th Cir R 47.5, the court has determined that this opinion should not be published and is not

precedent excepts under the limited circumstances set forth in 5th Cir R 47.5.4.

Howard C McDonald Jr appeals the dismissal of his 42 USC 1983 civil rights complaint under Fed R Civ P 12 (b)(6), based on the trial court's determination that McDonald failed to state a claim upon which relief may be granted. McDonald's complaint alleged that his ex-wife, Rosemary S McDonald and a number of individuals involved in a bitter child custody battle that is pending in Mississippi state court, conspired to take away his children by unlawful violations of his constitutional rights. Our review of the record discloses none of the defendants are amenable to suit under 1983. (1)

McDonalds claims against Special Chancellor Griffin in his official capacity are barred by the Eleventh Amendment because Griffin was acting as a state official. (2) To the extent McDonald alleges claims against Griffin in his individual capacity, it is clear that Griffin is entitled to absolute judicial immunity from suit. (3) McDonald has not shown that Griffins actions were taken outside of his judicial capacity or in the complete absence of all jurisdiction. (4) Contrary to McDonalds argument, the district court did not abuse its discretion by granting Griffins motion for a stay of discovery pending resolution of his immunity defense. (5)

The remaining defendants are not state actors and are not subject to suit under 1983. (6) McDonald's conclusional allegations that the private defendants

conspired with Special Chancellor Griffin to deprive him of his constitutional rights, absent reference to material facts, are insufficient to establish the existence of a conspiracy. (7)

The district court did not err in dismissing McDonalds complaint for failure to state a claim upon which relief may be granted. Nor did the district court err or abuse its discretion in denying McDonalds Rule 59 (e) motion to alter or amend the judgment dismissing McDonalds complaint.

The judgment appealed is AFFIRMED.

(1) The district court alternatively dismissed McDonalds claims under the Rooker-Feldman doctrine which provides that "federal district courts, as courts of original jurisdiction, lack appellate jurisdiction to review, modify, or nullify final orders of state court." See Weekly v Morrow 204 F 3d 613, 615 (5th Cir 2000) (citation omitted). As the Mississippi child custody proceeding in question in this case is currently pending, there is no final judgment to which the Rooker-Feldman doctrine may apply. Despite this error, the district courts dismissal of McDonalds complaint may be affirmed on the alternative basis that none of the parties are subject to suit under 1983.
(2) Bass v Parkwood Hosp 180 F 3d 234 (5th Cir 1999)
(3) Krueger v Reimer 66 F 3d 75 (5th Cir 1995)
(4) Malina v Gonzales 994 F 2d 1121 (5th Cir 1993)

## Appendix 9

(5) Hulsey v Owens 63 F 3d 354 (5th Cir 1995)(holding absolute immunity is immunity from suit rather than simply a defense against liability)
(6) Piotrowski v City of Houston 51 F 3d 512 (5th Cir 1995); 42 USC 1983.
(7) Mills v Criminal Dist Court No 3 837 F 2d 677 (5th Cir 1988)

U.S. Court of Appeals
Filed
Jul 25 2000
Charles R. Fulbruge III
Clerk

**Appendix 10**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FIFTH CIRCUIT**

**NO 99-60783**

**HOWARD C MCDONALD JR**
**PLAINTIFF- APPELLANT**

**V**

**WILLIAMS L GRIFFIN JR; JOHN DOE INSURANCE; AMERICAN CIVIL LIBERTIES UNION INC; JOHN DOE INSURANCE; LESLIE J COOPER; DUNABR WILLIAMS PLLC; JOHN DOE INSURANCE; C JACKSON WILLIAMS; ROSEMARY S MCDONALD; NANCY R EVANS**
**DEFENDANTS- APPELLEES**

**Appeal from the United States District Court for the Northern District of Mississippi, Aberdeen**

**ON PETITION FOR REHEARING**

**Before POLITZ, HIGGINBOTHAM and DeMOSS, Circuit Judges.**

**PER CURAM:**

**IT IS ORDERED that the petition for rehearing is denied.**

**ENTERED FOR THE COURT:**

Appendix 11

-S-
Henry A Politz
United States Circuit Judge
REHG-2

U.S. COURT OF APPEALS
FILED
AUG 22 2000
CHARLES R. FULBRUGE III
CLERK